Supreme Court, U. S.
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In The

Supreme Court of the United States

October Term, 1979

No. 79-1216

LAWRENCE J. SYROVATKA and
LORRAINE A. SYROVATKA,

Petitioners,

vs.

ELDIN J. EHRLICH, State Department of Public Welfare, and LEONE LILLIEDAHL, Director of Saunders County Department of Public Welfare, and JOHN and MARY DOE, real names unknown, PRESENT CUSTODIANS OF THE MINOR CHILDREN, HAROLD SYROVATKA and TIMOTHY SYROVATKA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION

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I.

OPINION BELOW

The opinion brought into question by the petitioners is *Lawrence J. Syrovatka, et al. v. Eldin J. Ehrlich, etc., et al.*, No. 79-1269, United States Court of Appeals for the Eighth Circuit.

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II.

JURISDICTION

The respondents accept the petitioners' invocation of this Court's jurisdiction.

———o———

III.

QUESTION PRESENTED

The respondents accept petitioners' statement of questions presented to the extent that the case does involve the termination of parental rights. The petitioners have argued the matter of prior notice. Respondents contend there was in fact notice and contend that there are the issues of a valid adoption and the best interests of the children.

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IV.

STATEMENT OF THE CASE

This is an action attacking an order of commitment (to the Nebraska State Department of Welfare) and the subsequent adoption of two minor children. The two children were committed on January 4, 1967, into the permanent custody of the State of Nebraska, Department of Public Welfare, by an order of the Saunders County, Nebraska, Court. With the consent of the Department of Public Welfare, they were adopted on October 2, 1968,

pursuant to an order of a Nebraska county court. A petition for habeas corpus was filed in state district court on March 6, 1972, collaterally attacking the court's jurisdiction to enter the commitment order. It alleged the 1967 commitment was void for want of notice to petitioners, even though the commitment order states: "Present in court are Lawrence Syrovatka and Lorraine Syrovatka, father and mother of the above named children."

The State of Nebraska Department of Public Welfare resisted the habeas corpus action asserting, along with other defenses, that an action attacking the validity of an adoption decree must be brought within two years after the rendition of that adoption decree and that the welfare of the children is paramount to the wishes of the parents. Following a trial in state district court, the late Honorable Elmer M. Scheel, District Judge, dismissed the petition and refused to grant the writ of habeas corpus. The petitioners appealed to the Supreme Court of Nebraska alleging that the lower court erred in not making a finding of fact that no notice of the January 4, 1967, commitment hearing in the county court or notice of the adoption proceedings were served on the parents, that the parents' constitutional rights were violated, and that the court should have furnished the parents the names of the adoptive parents. The Nebraska Supreme Court rejected petitioners' arguments, holding that the record indicated that they were in fact in court at the time of the hearing on the commitment and that there was in fact notice of the adoption proceedings.

In affirming the dismissal of the habeas corpus action in state court, the Nebraska Supreme Court noted that

the order of commitment was entered five years and two months before the filing of the petition, and that the adoption had been completed for three years and five months before its filing. Lawrence J. Syrovatka and Lorraine A. Syrovatka, the natural parents and petitioners in the above described action, petitioned the federal court for a writ of habeas corpus. Following a trial to the United States District Court for the District of Nebraska on December 22, 1978, the Honorable Judge Urbom, on January 9, 1979, ordered that the petition for writ of habeas corpus be dismissed. The order of the United States District Court for the District of Nebraska was appealed to the United States Court of Appeals for the Eighth Circuit by petitioners on October 31, 1979. That court affirmed the order of the United States District Court for the District of Nebraska and dismissed the application for writ of habeas corpus.

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V.

STATEMENT OF FACTS

On January 4, 1967, Saunders County Judge Myrl D. Edstrom, entered an order finding that Timothy Syrovatka and Harold Syrovatka, minor children of Lawrence J. Syrovatka and Lorraine A. Syrovatka, husband and wife, were neglected children and committed said children to the permanent custody of the Nebraska State Department of Public Welfare. In accordance with Neb. Rev. Stat. § 43-906 (Reissue 1974) the Department of Public Welfare used said order of commitment as a basis for placing the children in an adoptive home.

In the order of commitment to the Department of Public Welfare the county court specifically made a finding that petitioners Lawrence Syrovatka and Lorraine Syrovatka were in the court room on the date of the commitment, January 4, 1967.

A decree of adoption was entered by a Nebraska county court on October 2, 1968. Petitioners were notified of this adoption decree by a letter from the State Department of Public Welfare dated December 30, 1968.

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REASONS WHY THE WRIT SHOULD BE DENIED

I.

After two years from entry of decree of adoption, there is conclusive presumption of validity of decree of adoption.

In their petition for writ of certiorari petitioners allege reasons for granting the writ. They state that the case presents a conflict between a statutorily imposed two-year limitation on challenging adoptive proceedings and the Constitution of the United States. They assert that a statute which imposes such a time limitation is in violation of the Constitution. Petitioners point up the fact that the Court of Appeals for the Eighth Circuit indicated that there is evidence that the notice of the termination hearing did not adhere to highest standards of due proc-

ess. Petitioners then attack the Circuit Court's conclusion that petitioners' application for a writ of habeas corpus should be dismissed even if there was a finding that due process notice standards were not fully satisfied for the reason that the opportunity to challenge the adoptive proceedings by collateral attack was no longer available.

Respondents respectfully request that this Court deny the petition for writ of certiorari for the reason that the opinion of the United States Court of Appeals for Eighth Circuit, No. 79-1269 (attached to the Petition for Writ of Certiorari as Appendix A) has resolved the constitutional issues addressed by petitioners and has also considered the best interests of the children.

The adoption decrees in the instant case were entered in October, 1968. The fact that appellants chose not to attack the validity of those decrees until March, 1972, removes from them the *right* to attack the validity of the decrees. In *Hiatt v. Menendez,* 157 Neb. 914, 62 N. W. 2d 123 (1954), a case very similar to the instant case, the validity of an adoption decree was attacked on the basis that an irregularity existed. There the adoption decree was entered on September 17, 1949, and attention was not called to the irregularity until August 13, 1953, when a brief was filed in the Nebraska Supreme Court calling its attention to the irregularity. The court found that an irregularity did exist, but barred the appellant relief with the following comments:

> "The provisions of the statute do contemplate that decrees of adoption may be attacked for irregularity in the proceedings. The provision providing for the attack is stated negatively but nevertheless it purports to grant the right. The provision is, as applied to the facts of this case, that: 'When any county court in the State of Nebraska shall . . . hereafter enter of record such a decree of adoption, it shall . . . be conclusively presumed that said adoption and all instruments and proceedings in connection therewith are valid in all respects notwithstanding some defect or defects may appear on the face of the record, . . . unless an action is brought within two years from the entry of such decree of adoption attacking its validity.' § 43-116, R. R. S. 1943." *Hiatt v. Menendez,* 157 Neb. at 918, 62 N. W. 2d at 126.

The court then commented that the attack on its validity was made more than three years after the rendition of the decrees of adoption. The court then stated:

> "Certainly the appellant was barred by the statute from taking advantage of the irregularity which appeared on the face of the record in the adoption proceeding." *Id.* at 919, 62 N. W. 2d at 127.

Just as the appellant was barred from attacking the validity of the adoption decree in the *Hiatt* case, so must the petitioners in the instant case be barred from attacking the validity of the adoption decrees entered in October, 1968, by an action filed in state court more than three years after the rendition of those adoption decrees and in the United States District Court more than nine years after the decree.

Petitioners challenge the two-year limitation in the statute. The respondents contend conclusive presumption of validity contained in Neb. Rev. Stat. § 43-116 (Reissue 1978) operates to bar the subsequent action challenging the defect. Such was the position of the Supreme Court of Nebraska in the case at bar. *Syrovatka v. Graham,* 190 Neb. 355, 208 N. W. 2d 281 (1973). A conclusive presump-

tion will be upheld so long as it is reasonable. *Shanahan v. United States,* 447 F. 2d 1082, 1084 (10th Cir. 1971). On this point respondents emphasize the language of the Court of Appeals in the case at bar:

> ". . . Here the State of Nebraska has a legitimate and important interest in establishing a stable environment for adopted children. This statute requiring an action challenging an adoption proceedings to be brought within two years of the adoption has a reasonable relation to this legitimate state purpose."

II.

When the statutes require only the consent of the State Department of Public Welfare as to an adoption, it is not necessary to serve notice on any other person, including the natural parent.

In the petition for a writ of certiorari it is alleged that the petitioners did not have any knowledge of this adoption and obviously did not consent to it in any way.

Petitioners have claimed that the district court erred in not making a finding of fact that no notice of the adoption proceedings of Harold and Timothy Syrovatka was served on the petitioners.

By order of the Saunders County Court, dated January 4, 1967, Timothy Syrovatka and Harold Syrovatka were committed to the Nebraska Department of Public Welfare. Subsequent to that commitment, the Department of Public Welfare consented to the adoption of Timothy Syrovatka and Harold Syrovatka, and on October 2, 1968, adoption decrees were issued by a Nebraska county court decreeing the adoption of both Timothy and Harold.

Neb. Rev. Stat. § 43-209 (Reissue 1978) provides in part:

> "In any case where the court shall award a child to the care of the Department of Public Welfare, . . . in accordance with the provisions of this act, the child shall, unless otherwise ordered, become a ward and be subject to the guardianship of the department, . . .
>
> ". . .
>
> "When the parental rights have been so terminated and the care of such child is awarded to the Department of Public Welfare, the department shall have authority to consent to the legal adoption of such child *and no other consent shall be required to authorize any court having jurisdiction to enter a legal decree of adoption* of such child. . . .; *Provided,* the Department of Public Welfare, an individual, or an association to whom the care of a child has been committed by a juvenile court *prior to* July 13, 1967, shall have authority to consent to the legal adoption of such child, without an order terminating parental rights. . . ." (Emphasis added.)

The above quoted statute makes it clear that when a child has been committed to the Department of Public Welfare, even without a termination of parental rights, if that child has been committed prior to July 13, 1967, the *only* consent that is required to authorize any court having jurisdiction to enter a legal decree of adoption of a child, is the consent of the Department of Public Welfare.

III.

The welfare of the child is paramount to the wishes of the parent.

There are numerous cases in which the Supreme Court of Nebraska has held that in controversies concerning chil-

dren, the interest of those children is paramount over the interest of any other party. The Nebraska Supreme Court, quoting the holding of many prior cases, reaffirmed this position in *Kaufmann v. Kaufmann*, 140 Neb. 299, 299 N. W. 617 (1941), when it said:

> "'In a controversy for the custody of an infant of tender years the court will consider the best interests of the child and will make such order for its custody as will be for its welfare, without reference to the wishes of the parties.' *Schroeder v. State,* 41 Neb. 745, 60 N. W. 89. See, also *Sturtevant v. State,* 15 Neb. 459, 19 N. W. 617; *Giles v. Giles,* 30 Neb. 624, 46 N. W. 916; *Steward v. Elliott,* 113 Neb. 421, 203 N. W. 580; *Smidt v. Benenga,* 140 Ia. 399, 118 N. W. 439; *Ellison v. Platts,* 226 Ia. 1211, 286 N. W. 413." *Id.* at 312.

Even in habeas corpus proceedings, the Nebraska Supreme Court has held that the welfare of the child is the court's primary concern. It was so stated in *Christopherson v. Christopherson,* 177 Neb. 414, 129 N. W. 2d 113 (1964):

> ". . . 'Ordinarily, the basis for the issuance of a writ of habeas corpus is an illegal detention, but in the case of a writ sued out for the detention of a child, the law is concerned not so much about the illegality of the detention as about the welfare of the child.'" *Id.* at 417. See, also, 25 Am. Jur., Habeas Corpus, § 78, p. 203.

In the present case, it is important to note that Harold Syrovatka and Timothy Syrovatka were adopted in October, 1968, that the only home these boys have known for over eleven years is the one in which they now reside, and that to remove them now from the only home they have known would be to cause them to suffer

irreparable harm. Over eleven years ago the couple with whom Harold and Timothy were placed adopted these boys and became "mother" and "father" to them. As was said by the Nebraska Supreme Court in *In re Application of Schwartzkopf,* 149 Neb. 460, 31 N. W. 2d 294 (1948):

> "Adoption proceedings determine more than the custody of the adopted child. It has been held in the case of In re Estate of Enyart, 116 Neb. 450, 218 N. W. 89, that 'Pursuant to this statute, the decree of adoption created, in law, between the adoptive parent and adopted child, *the relation of parent and child,* . . .'" *Id.* at 464. (Emphasis added.)

Thus, it would serve no useful purpose to uproot Timothy and Harold Syrovatka from a security they have come to know and place them with virtual strangers.

In their petition for a writ of certiorari the petitioners suggest that they be granted some limited contact or visitation, if not full custody. However, the suggestion is followed by the statement that such an arrangement could only be effected after a full hearing with all parties present. Timothy will be 19, the age of majority in Nebraska, in November, 1980. Harold will reach the age of majority in December, 1982. Both boys have spent formative years with their adoptive parents. Although no longer children, they still could be adversely affected by a custody hearing as suggested by petitioners. Such would not be in the best interests of these children. As was said by the Supreme Court of Nebraska:

> "The welfare of the child is paramount to the wishes of the parent." *Hausman v. Shields,* 184 Neb. 88, 90, 165 N. W. 2d 581 (1969).

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CONCLUSION

The respondents submit that the welfare of the children will best be served by them continuing to live undisturbed with their adoptive parents.

In view of the above arguments the respondents respectfully request that the petition herein for a writ of certiorari be denied.

Respectfully submitted,

ELDIN J. EHRLICH, State Department of Public Welfare, and LEONE LILLIEDAHL, Director of Saunders County Department of Public Welfare, and JOHN AND MARY DOE, real names unknown, PRESENT CUSTODIANS OF THE MINOR CHILDREN, HAROLD SYROVATKA and TIMOTHY SYROVATKA,

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